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MCDERMOTT WILL & EMERY LLP
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EXAMINER

WILLIAMS, MARK A

ART UNIT	PAPER NUMBER
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3676

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Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, it is unclear exactly what is meant by “biasing the hinge latch from the locked position to the unlocked position adjusts the locking hinge from the first configuration to the second configuration”, in context of the claimed invention. It is unclear if applicant intends to claim that biasing the hinge latch in this manner causes simultaneous adjustment of the locking hinge, or if applicant intends to claim that biasing the hinge latch in this manner allows the locking hinge to be adjustable in the manner claimed. If applicant intends to claim that biasing the hinge latch in this manner causes simultaneous adjustment of the locking hinge, it is not understood exactly how this would be possible in the context of the claimed invention; by what structure is this achieved? Applicant must clarify his intent. For purposes of this action, the examiner is considering the

claim as if applicant intends to claim that biasing the hinge latch in this manner allows the locking hinge to be adjustable in the manner claimed.

In claim 22, it is unclear exactly what is meant by “upon the lower ladder section being folded relative to the upper ladder section, the biasing member allowed to bias the hinge latch towards the locked position”, in the context of the invention. It is unclear if applicant intends to claimed this as a method step, as if a users is allowing the member to bias as claimed; or meaning that the biasing member is allowed to bias the hinge latch in this manner by the inherent structure of the device itself. Applicant must clarify his intent. If the first is true, the applicant should note that an apparatus claim can not be properly limited by this form of method step. For purposes of this action, the examiner is considering the claim to be directed to the inherent operating structure of the device.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 14, 15, and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenger, US Patent 3,143,185, in view of Donahey, US Patent 5,165,501. Wenger provides a foldable ladder configured for installation in an opening to provide access between one floor or space and another floor or space, comprising an upper ladder section having at least one rail; a lower ladder section having at least one rail; a locking hinge 37 connecting the rail of the upper ladder section to the rail of the lower ladder section and configured to allow the lower ladder section to fold relative to the upper ladder section, wherein when the upper ladder section and the lower ladder section are fully unfolded, the locking hinge adjustable between at least two configurations, in a first configuration, the locking hinge completely preventing the lower ladder section from folding relative to the upper ladder section, and in a second configuration, the locking hinge allowing the lower ladder section to fold relative to the upper ladder section. A total length of the foldable ladder is approximately equal to or greater than a length of the upper section plus a length of the lower section, as claimed.

Wenger does not explicitly teach a second hinge connected to the upper ladder section to fixedly attach to a member associated with the opening, as claimed. Donahey teaches this concept as additional means for supporting the ladder. It would have been obvious at the time the invention was made for one

skilled in the art to have included in the design of Wenger such a modification, such as generally taught by Donahey, for the purpose of providing additional means for supporting the ladder.

Regarding the limitations of claims 18-22, the locking hinge is considered in the first configuration immediately after the upper ladder section and the lower ladder section being fully unfolded. Biasing the hinge latch 16 from the locked position to the unlocked position allows the adjustment of the locking hinge from the first configuration to the second configuration. A biasing member 18 biasing the hinge latch towards the locked position. Upon the hinge latch being in the unlocked position, the biasing member prevented from biasing the hinge latch towards the locked position via 21 (by a user). Upon the lower ladder section being folded relative to the upper ladder section, the biasing member allowed to bias the hinge latch towards the locked position, as claimed.

3. Claims 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wenger in view Donahey in further view of Gould et al., US Patent 4,823,912. Wenger does not explicitly teach the claimed bracket member. Gould teaches such a bracket member for the purpose of providing additional means for securing a ladder. It would have been obvious at the time the invention was made for one

skilled in the art to have modified the device in this way, for the purpose providing additional securing means.

Allowable Subject Matter

4. Claims 23-28 are allowed.

Response to Arguments

5. Applicant's arguments filed 12/15/05 have been fully considered but they are not persuasive.

Applicant argues that the combination of Wenger and Donahey does not teach or suggest the claimed second hinge configured to fixedly attach to a member associated with an opening, as claimed. The examiner disagrees, in that the device of Donahey is designed such that it is capable of being used for such a purpose. Although an opening is not specifically taught by the combination of Wenger and Donahey, the claim language is such that as long as the resulting device is capable of performing such a function the limitation is met.

Conclusion

This action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (571) 272-7064. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Williams
2/2/06



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